

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PACIFIC SOUND RESOURCES, a Washington  
non-profit corporation; and THE PORT OF  
SEATTLE, a Washington municipal corporation;

Plaintiffs,

v.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY, a Delaware  
corporation; J.H. BAXTER & CO., a California  
limited partnership; J.H. BAXTER & CO., a  
California corporation; and J.H. BAXTER & CO.,  
INC., a California corporation.

Defendants.

No. C04-1654Z

**PLAINTIFFS' INITIAL  
DISCLOSURES UNDER FEDERAL  
RULE OF CIVIL PROCEDURE 26(a)**

Pursuant to the Combined Joint Status Report and Discovery Plan submitted October 12, 2004, Plaintiffs Pacific Sound Resources ("PSR") and The Port of Seattle ("Port") ("plaintiffs") hereby make the following voluntary disclosures under Federal Rule 26(a).

Before this case was filed, the parties engaged in nearly two years of litigation over the contamination at the site from which this case arises. In the course of that litigation, styled *Pacific Sound Resources and The Port of Seattle v. Burlington Northern Santa Fe Railway Corp., et al.*, No. 02-2-27778-1SEA in the Superior Court of King County, Washington,

plaintiffs produced for inspection and copying hundreds of thousands of pages of documents from which tens of thousands of pages were copied and provided to the parties.

Plaintiffs believe that their earlier disclosures far exceeded the requirements of Federal Rule of Civil Procedure 26(a) and incorporate those disclosures herein by reference. As described in the Joint Status Report filed by the parties in this case, plaintiffs nevertheless agreed to make additional disclosures on specific issues requested by defendants.

## **I. Prior Discovery Disclosures**

### **A. PSR Former Employees**

In the prior state court litigation, PSR's discovery responses identified dozens of former employees as persons with knowledge of relevant facts. It also made available to defendants all employee personnel files in its possession as of April 2003. As requested by defendants, the following is a shorter list of former employees who are known to still be alive and to have discoverable information relevant to this case. Plaintiffs reserve the right to supplement this list as discovery continues.

1. Ted DePriest: Mr. DePriest was the president of the Company from 1978 until 1994. Mr. DePriest has knowledge of plant operations, remediation and other events occurring during this time period. Mr. DePriest's address information is: 13467 – 64<sup>th</sup> Place NE, Kirkland, WA 98034; (206) 933-1000;
2. Oscar Flowers: Mr. Flowers held many positions at the West Seattle Plant from 1971 to 1991, including tie loader, framer, hook tender, incisor, talleyman, and foreman. Mr. Flowers' address information is: 4917 Thistle Drive, Apt. 701, Tyler, TX; (903) 509-0335;
3. Edgar L. Frease: Mr. Frease worked for the Company from 1941 to 1982. He also worked part-time from 1983 to 1988. He was originally hired as a bookkeeper at the Eagle Harbor Plant and was promoted to the Sales department at the downtown corporate office. Mr. Frease's address

information is: 8811 Battle Point Drive NE, Bainbridge Island, WA 98110-1481; (206) 842-2509;

4. Charles Hudson: Mr. Hudson worked for the Company from 1964 to 1988.

He was hired as a chemist and was promoted shortly thereafter to the company's position of Technical Director. Mr. Hudson's address information is: 121 Hasenlock Rd., Chehalis, WA 98532-8432; (360) 262-0912;

5. Ralph Johnson: Mr. Johnson worked for the Company from 1962 to 1989.

While employed at the Company, he was a hooker, car loader, crane operator, and general maintenance man. Mr. Johnson's address information is: 3506 NE 7<sup>th</sup> Street, Renton, WA 98056; (425) 255-2280;

6. Frank Laine: Mr. Laine was employed by the Company from June 1958 to December 1958 and from 1963 to 1994. He served as a Crane Operator and a Drott Operator. His address information is: 4522 - 332<sup>nd</sup> Avenue SE, Fall City, WA 98024; (425) 222-5703;

7. Darrell Palmer: Mr. Palmer worked for the Company from 1965 to 1991. He was hired as a Forester and was eventually promoted to Chief Forester at the Company. His address information is: 76709 London Rd., Cottage Grove, OR 97424; (541) 942-4200;

8. Clarence Rein: Mr. Rein was a tie stacker at the Company from 1946 to 1980. His address information is: 3720 - 35<sup>th</sup> Avenue SW, Seattle, WA 98126; (206) 935-0993; and

9. LeRoy Thompson: Mr. Thompson served many positions at the Company from 1965 to 1994. He was hired as a Locomotive Operator. He was then promoted to Lead Talleyman for 10 years. He also served as Foreman at the Eagle Harbor Plant for one year. He served the last 20 years with the Company as Assistant Superintendent. His address information is: 440 SE Evans Lane, Issaquah, WA 98027-4303; (425) 392-7679.

**B. Port Employees**

In the state court lawsuit, the Port provided the names and addresses of numerous individuals with knowledge of relevant facts. These disclosures are incorporated herein by reference. The following witnesses are likely to have discoverable information relevant specifically to plaintiffs' claims relating to costs incurred at the Marine Sediments Unit.

1. Kathy Bahnick: Ms. Bahnick is the Environmental Project Manager for the Marine Sediments Unit;
2. Robin Stevens: Ms. Stevens is the Port Staff accountant who worked on Cost Accounting Claims 17 and 18; and

**C. Other Witnesses**

1. Warren Hanson: Mr. Hanson is a consultant with OnSite Consulting and worked with the Port on Cost Accounting Claims 17 and 18.

**D. Plaintiffs' Damages**

Contrary to the statements made by defendants in the Joint Status Report, plaintiffs did provide a computation of damages relative to the work done in the Marine Sediments Unit. The information was reported in two declarations under oath, one from Kathy Bahnick, a Port employee, and one from Ruth Broome, who is employed by the U.S. Environmental Protection Agency. Those disclosures are incorporated herein by reference.

During 2003 the Port performed work in the Marine Sediments Unit consisting primarily of removing old pilings from the area where sediments are being remediated by EPA. The Port's work was spelled out in a Supplemental Administrative Order on Consent and a Supplemental Scope of Work dated December 4, 2002, both of which have been produced to defendants.

The Port's costs for the Supplemental Scope of Work were submitted to and approved by EPA as part of the Port's Cost Accounting Reports 17 and 18. Backup documentation for the costs has largely been provided to defendants. All of the work represented by Cost Accounting Reports 17 and 18 was not performed in the Marine Sediments Unit, but, as

1 reported in the Bahnick declaration, the costs in those Cost Accounting Reports attributable  
2 to the Marine Sediments Unit were at least \$490,985.25. Plaintiffs produced to defendants  
3 the accounting records submitted by the Port to EPA for Claims 17 and 18 denoted by Bates  
4 range POS 15079 to POS 15170.

5 There are additional costs for work in the Marine Sediments Unit that have not yet  
6 been submitted to EPA. These costs will be submitted as part of the Port's Cost Accounting  
7 Claim 19 and documentation for those costs will be provided as soon as it is available.

8 In addition, plaintiffs will make available for review by defendants the Port's  
9 accounting working papers used to prepare Cost Accounting Claims 17, 18 and 19.

10 As plaintiffs have previously informed defendants, PSR has not performed any work  
11 itself in the Marine Sediments Unit but instead, through a liquidation plan described in a 1994  
12 Consent Decree, has liquidated assets and provided the proceeds to EPA. PSR is not in  
13 possession of detailed information regarding the specific expenses paid by EPA from funds  
14 provided by PSR. As described in the Broome declaration, however, PSR understands that  
15 \$10,550,304.06 has been spent or allocated to cleanup of the Marine Sediments Unit. PSR is  
16 attempting to obtain additional information from EPA and will make it available when it is  
17 obtained. In addition, PSR will be producing additional documents relating to its income and  
18 expenses since entry of the Consent Decree in 1994.

#### 19 **E. Insurance Policy and Settlement Issues**

20 Attached is a coverage chart showing policy numbers and years, limits, insurers and  
21 other information for all the insurance policies PSR was able to determine may have provided  
22 coverage for the site at issue (Attachment A). Over the course of several years, PSR settled  
23 claims with several of its insurers and a coverage lawsuit was filed against two others. All  
24 claims were ultimately settled with policy releases, meaning that coverage is no longer  
25 available under any of the policies.

26 Plaintiff PSR believes that information regarding its insurers or settlements with  
27 insurers is irrelevant to this case. Moreover, defendants have not incurred any response or

remedial action costs relative to the Marine Sediments Unit. Several of PSR's settlements with insurers contain confidentiality provisions that prohibit PSR from disclosing the terms of the agreements. Nevertheless, PSR has agreed to provide some information on the amount of insurance proceeds received by PSR. Total proceeds from insurance settlements, net of attorneys fees and expenses, were \$16,151,760.40.

**F. Contracts between Port and PSR and between Port and other owners or operators of Plant**

The Port has conducted a thorough review of its files and has not been able to identify any contracts with PSR and/or any other owners or operators of the Plant. Likewise, PSR has conducted a thorough review of its files and has not been able to identify any contracts with the Port.

Dated this 5<sup>th</sup> day of November, 2004.

s/ Gillis E. Reavis  
\_\_\_\_\_  
WSBA No. 21451  
Rodney L. Brown, Jr., WSBA No. 13089  
David D. Dicks, WSBA No. 29422  
BROWN REAVIS & MANNING PLLC  
1201 Third Avenue, Suite 320  
Seattle, WA 98101  
Telephone: (206) 292-6300  
Fax: (206) 292-6301  
E-mail: [greavis@brmlaw.com](mailto:greavis@brmlaw.com)  
[rbrown@brmlaw.com](mailto:rbrown@brmlaw.com)  
[ddicks@brmlaw.com](mailto:ddicks@brmlaw.com)

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on November 5, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas D. Adams Bullivant Houser Bailey PC 1601 Fifth Avenue, Suite 2400 Seattle, WA 98101-1618 Email: <a href="mailto:tom.adams@bullivant.com">tom.adams@bullivant.com</a> <b>Attorneys for Defendant The Burlington Northern and Santa Fe Railway Company</b>	John F. Barg Barg Coffin Lewis & Trapp, LLP One Market Steuart Tower, Suite 2700 San Francisco, CA 94105-1475 Email: <a href="mailto:jfb@bcltlaw.com">jfb@bcltlaw.com</a> <b>Attorneys for Defendant The Burlington Northern and Santa Fe Railway Company</b>
James C. Hanken Law Offices of James C. Hanken 999 Third Avenue, Suite 3210 Seattle, WA 98104 Email: <a href="mailto:jhanken@hankenlaw.biz">jhanken@hankenlaw.biz</a> <b>Attorneys for Defendants Baxter Entities</b>	Marc A. Zeppetello Barg Coffin Lewis & Trapp, LLP One Market Steuart Tower, Suite 2700 San Francisco, CA 94105-1475 Email: <a href="mailto:maz@bcltlaw.com">maz@bcltlaw.com</a> <b>Attorneys for Defendant The Burlington Northern and Santa Fe Railway Company</b>

s/ Mary V. Liton

BROWN REAVIS & MANNING PLLC  
 1201 Third Avenue, Suite 320  
 Seattle, Washington 98101  
 Telephone: (206) 292-6300  
 Fax: (206) 292-6301  
 E-mail: [mliton@brmlaw.com](mailto:mliton@brmlaw.com)